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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,658	12/30/2003	Golchehreh Salamat	560773	1657

27452 7590 03/16/2006

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EXAMINER

COY, NICOLE A

ART UNIT PAPER NUMBER

3672

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/707,658	<b>Applicant(s)</b> SALAMAT, GOLCHEHREH	
	<b>Examiner</b> Nicole Coy	<b>Art Unit</b> 3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's amendment filed 1/4/2006 has overcome the rejection under 112.

Thus, the rejection under 112 has been withdrawn.

2. Applicant's arguments filed 1/4/2006 with respect to the 103 rejections have been fully considered but they are not persuasive. Applicant argues that that which is inherent in the prior art, if not known at the time of the invention, cannot form a proper basis for rejecting the claimed invention as obvious. Applicant further cites a case, which states that that which is may be inherent is not necessarily known and obviousness cannot be predicated on what is unknown. The Examiner respectfully points out that the Examiner is not arguing that the peak of the combined emulsion solution is obvious. Rather, the basis of the Examiner's obvious rejection is the combination of Parlar et al. in view of Fischer et al. to teach a sorbitan fatty acid emulsion. The emulsion solution of Parlar et al. in view of Fischer et al. is that which is recited in claim 1, and therefore would present a shoulder peak before the monomer peak when analyzed by gel permeation chromatography. Furthermore, the Applicant has not shown that the emulsion of Parlar et al. in view of Fischer et al. does not necessarily possess the characteristics of the claimed product.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parlar et al. (USP 6,631,764) in view of Fischer et al. (USP 3,753,903).

With respect to claims 1 and 2, Parlar et al. teaches a method of gravel packing a hole in subterranean formation including the step of pumping into the hole a gravel pack composition comprising gravel and a carrier fluid comprising a brine-in-oil emulsion (see column 8 lines 18-22). Parlar et al. further teaches an emulsion stabilized by an emulsifier based on a fatty acid ester. (see column 8 line 21).

However, Parlar et al. is silent as to the specific fatty acid ester. Fischer et al. teaches that useful oil-soluble emulsifiers include sorbitan monooleate and sorbitan trioleate (see column 6 lines 32-35). Fischer et al. teaches that these sorbitan fatty acid esters are added to the carrier fluid in order to stabilize it (see column 6 line 23). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Parlar et al. by selecting sorbitan monooleate and sorbitan trioleate as the specific fatty acid ester as taught by Fischer et al. in order to form a stable carrier fluid.

Furthermore, the emulsion solution of Parlar et al. in view of Fischer et al. is that which is recited in claim 1, and therefore would present a shoulder peak before the monomer peak when analyzed by gel permeation chromatography.

With respect to claim 3, the ratio between the peak height of the earlier and later peak would inherently be greater than 0.5 as the emulsion solution of Parlar et al. in view of Fischer et al. is substantially identical to the claimed emulsion.

With respect to claim 4, Parlar et al. teaches a brine solution of 50 % (see column 8 table 1).

With respect to claim 5, Parlar et al. teaches the aqueous phase of the carrier fluid comprising a chelating agent (see column 3 lines 29-34).

With respect to claim 6, Parlar et al. teaches examples of chelating agents, such as EDTA, CDTA, EGTA, HEDTA, and HEIDA (see column 3 lines 34-47).

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole Coy whose telephone number is 571-272-5405.

The examiner can normally be reached on M-F 8:00-5:30, 1st F off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

nac

  
William Neuder  
Primary Examiner